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MONTANA LEGISLATIVE HISTORY

Chapter 565 ~~19~~ 2001

Bill H 355 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s) 2/6 ✓		C	Hearing Date(s) 3/9	✓	C
+ EXEC. ACTION		C	EXEC. ACTION 3/23	3	C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ✓ No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

HOUSE BILL NO. 359

INTRODUCED BY P. CLARK

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE COLLECTION OF DNA EVIDENCE TO ALL FELONY OFFENSES; DEFINING "FELONY OFFENSE"; AND AMENDING SECTIONS 44-6-101, 44-6-102, 44-6-103, AND 44-6-107, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 44-6-101, MCA, is amended to read:

"**44-6-101. Definitions.** As used in this part, the following definitions apply:

(1) "Biological sample" means cheek cells removed by using a buccal swab of a type authorized by the department or a vial or other container of blood.

(2) "Department" means the department of justice provided for in 2-15-2001.

(3) "DNA" means deoxyribonucleic acid.

(4) "DNA identification index" means the DNA identification record system established under 44-6-102.

(5) "DNA record" means DNA identification information stored in the DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form of the results of a DNA analysis, such as the numerical representation of DNA fragment lengths, autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.

(6) "DNA testing" means DNA analysis of materials derived from the human body for the purposes of identification consistent with this part.

(7) "Felony offense" has the meaning provided for a felony in 45-2-101.

~~(7)~~(8) "Forensic DNA laboratory" means any laboratory operated by state government that performs DNA analysis on materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification.

~~(8)~~(9) "Marker" means a method of describing individuals by genetic profile, such as blood or DNA type, and has the specific meaning given to the word by department rule, which must take into account the meaning generally given to the word for forensic typing by DNA technologists.

~~(9) "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.~~

~~(10) "Violent offense" has the meaning contained in 46-23-502.~~"

Section 2. Section 44-6-102, MCA, is amended to read:

"**44-6-102. Establishment of DNA identification index.** (1) The department shall establish a computerized DNA identification index for the receipt, storage, and exchange of DNA records. The DNA identification index is the central repository for DNA records in the state of Montana.

(2) The DNA identification index must include:

(a) DNA records for an individual convicted of~~,~~ a felony offense or a youth found under 41-5-1502 to have committed~~, a sexual offense or violent~~ an offense that if committed by an adult would be considered a felony offense;

(b) DNA records for a person upon order of a sentencing judge under 46-18-202; and

(c) analyses of DNA samples recovered from crime scenes, medical examinations, and unidentified human remains. For purposes of identification of missing persons, the DNA identification index may include DNA records of close biological relatives of a missing person.

(3) The DNA identification index and the DNA testing done by a forensic DNA laboratory must be compatible with the systems of DNA identification used by other criminal justice agencies or private testing laboratories to the extent necessary to permit the exchange of DNA information.

(4) The DNA records collected and stored in the DNA identification index may contain only information relating to the identification of individuals. Information that identifies a person that is the subject of a record must be limited to the information that is necessary to pursue criminal investigations and to support statistical interpretation of results.

(5) The DNA identification index may be used:

(a) by law enforcement agencies for purposes of identification in the course of criminal investigations and proceedings;

(b) to assist in the identification of human remains, including identification of missing persons; and

(c) if information allowing a person to be identified is removed, for a population statistics database and for identification, research, and protocol development for forensic DNA analysis and quality control."

Section 3. Section 44-6-103, MCA, is amended to read:

"**44-6-103. Collection of samples and maintenance of data.** (1) Following entry of judgment, a

person convicted of ~~a sexual offense or violent~~ a felony offense, a youth found under 41-5-1502 to have committed ~~a sexual offense or violent~~ an offense that if committed by an adult would be considered a felony offense, or a defendant ordered under 46-18-202 to provide a biological sample for DNA testing shall provide a biological sample for DNA analysis to determine identification characteristics specific to the person. The sample must be provided to the department of corrections if the person is incarcerated in a facility administered by the department of corrections. If the person is not incarcerated in a facility administered by the department of corrections, the sample must be provided to a person or entity designated by the county sheriff.

(2) The biological sample must be collected, stored, and sent by the department of corrections or the person or entity designated by the county sheriff under subsection (1) to the department for entry in the DNA identification index in accordance with rules adopted by the department with the advice of the department of public health and human services.

(3) The forensic DNA laboratory may perform DNA analysis only for those markers that have value for law enforcement identification purposes.

(4) The knowing refusal or failure to provide a biological sample under this part is grounds for revocation of a suspended or deferred imposition of sentence."

Section 4. Section 44-6-107, MCA, is amended to read:

"**44-6-107. Expungement of DNA records.** If a conviction of ~~a sexual or violent~~ a felony offense or the adjudication of a youth for an offense that would be a felony offense if committed by an adult is reversed, the record relating to the offense must be expunged from the DNA identification index. The county attorney of the county in which the conviction occurred shall notify the department of a reversal of a conviction for ~~a sexual or violent~~ the offense or adjudication."

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on February 2, 2001 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Bill Eggers (D)
Rep. Gail Gutsche (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: Rep. Aubyn A. Curtiss (R)
Rep. Steven Gallus (D)
Rep. Christopher Harris (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 201 - 1-25-01**
HB 359 - 1-30-01
HB 202 - 1-30-01

concealed carry process as a mechanism that is already in place.

{Tape : 2; Side : A; Approx. Time Counter : 3.6 - 29.9}
{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 0.9}

HEARING ON HB 359

Sponsor: Rep. Paul Clark, HD 72, Trout Creek said currently the State of Montana does have a DNA data base at the crime lab in Missoula which is under the jurisdiction of the Montana Department of Justice. **EXHIBIT(juh27a07) EXHIBIT(juh27a08)**

Proponents: Julie Long, Supervisor, State Crime Lab EXHIBIT(juh27a09)

Diane Leibinger-Koch, Attorney, Department of Corrections, Helena.

Opponents: None

Questions from Committee Members and Responses: Rep. Adams to Ms. Leibinger-Koch.

Closing by Sponsor: Rep. Clark closed the Hearing on HB 359 by saying the primary purpose of government agencies should be to protect the safety of our citizens. This is a Bill that does just that in a simple straight forward way. The money saved in the Bill, which cannot be calculated and put in the fiscal note, exceeds by far, the money spent.

{Tape : 2; Side : B; Approx. Time Counter : 0.8 - 21.7}

HEARING ON HB 182

Sponsor: Rep. Brad Newman, HD 39, Butte EXHIBIT(juh27a10). HB 182 would amend a particular provision in the Montana Code Annotated Section 19-5-103 which is entitled "call of retired judge for duty". Under current Montana law, when a district judge takes ill, a district judge dies, a district judge is unavailable for service and that particular judicial district needs help, the Chief Justice has the authority to call a retired judge into service to fill the void and to get people their legal redress. The statute as it exists right now, has the word "voluntarily" in front of retired and that has been interpreted to mean that a judge who has stood for re-election and been defeated can't be called into service. The provision on line 13

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EXECUTIVE ACTION ON HB 396

Motion: REP. PETERSON moved that HB 396 DO PASS. #7

Discussion: Reps. Adams, Peterson, Gutsche, Hurdle, Laszloffy.

{Tape : 4; Side : A; Approx. Time Counter : 5.4 - 29.3}
{Tape : 4; Side : B; Approx. Time Counter : 0.1 - 3.2}

Motion: REP. LASZLOFFY moved a substitute motion that HB 396 BE AMENDED. #8

Discussion: Reps. Peterson, Noennig, Shockley, Mangan.

Vote: The Laszloffy amendment #8 carried 14-6 with Reps. Clancy, Gutsche, Hurdle, Newman, Peterson, Thomas voting no.

Discussion: Reps. Newman, Shockley, Peterson, Thomas, Adams, Hurdle, Rice, Wolery.

{Tape : 4; Side : B; Approx. Time Counter : 3.2 - 21}

Motion/Vote: REP. SHOCKLEY moved that HB 396 DO PASS AS AMENDED. #9 Motion carried 13-7 with Reps. Shockley, Adams, Clancy, Gutsche, Holden, Rice and Wolery voting no.

EXECUTIVE ACTION ON HB 359

Motion: REP. NEWMAN moved that HB 359 DO PASS. #10

Motion: REP. LASZLOFFY moved that HB 359 BE POSTPONED until Monday. #11.

EXECUTIVE ACTION ON HB 202

Motion: REP. WOLERY moved that HB 202 DO PASS. #12

Motion: REP. PETERSON moved that HB 202 BE AMENDED. #13

Discussion: Reps. Clancy, Peterson.

{Tape : 4; Side : B; Approx. Time Counter : 21 - 29.3}

Vote: Motion #13 carried 13-7 with Reps. Clancy, Gutsche, Holden, Hurdle, Rice, Thomas and Wolery voting no.

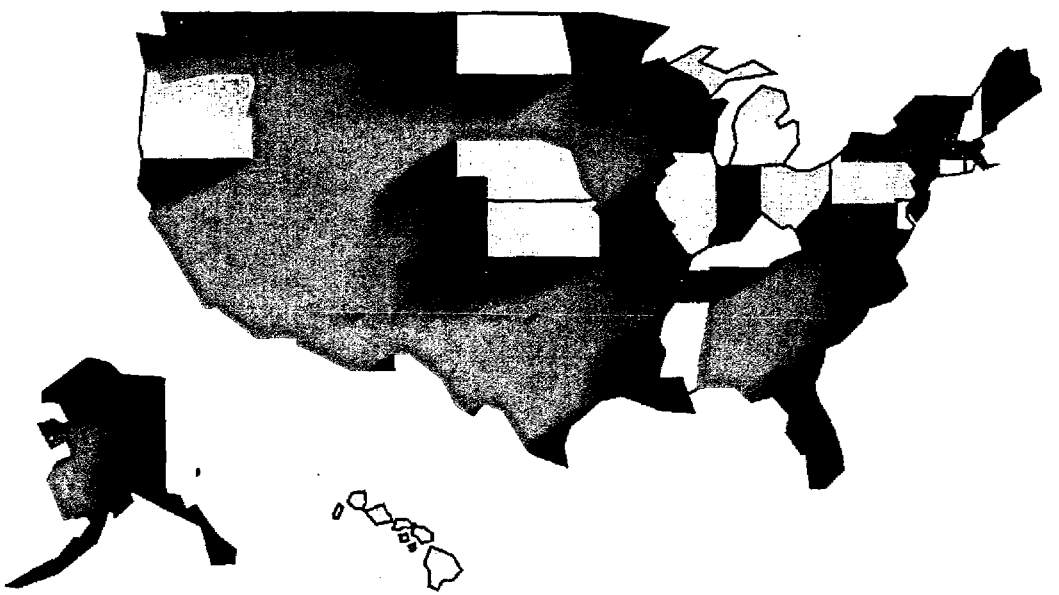
EXHIBIT 7
DATE 2-03-01
HB 359

Sex Offender Requirements

■ Require DNA samples for sex offenses (50)

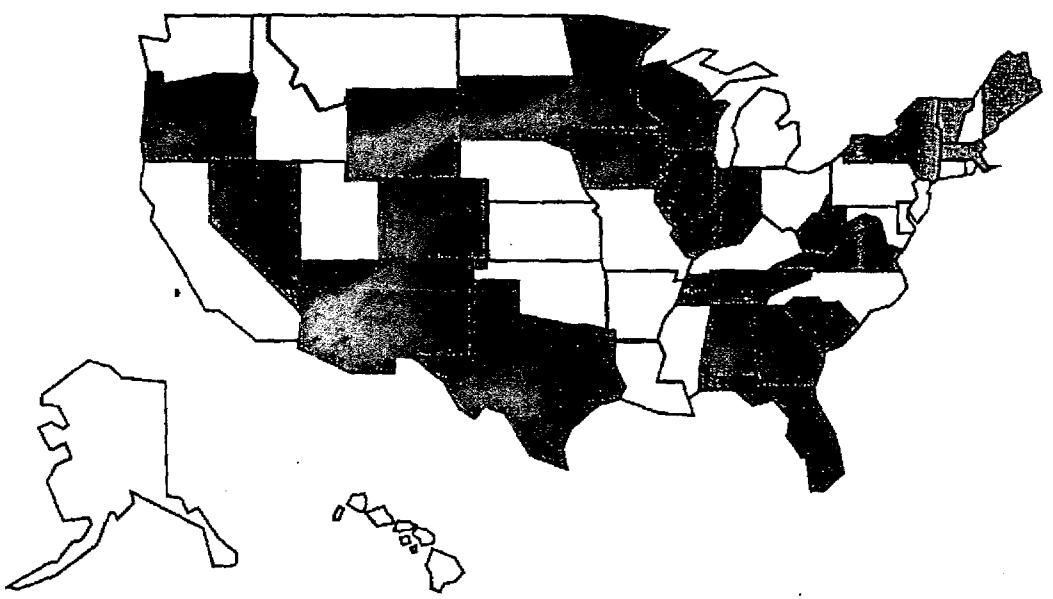
Violent Crime Requirements

- Require DNA samples for murder and assault and battery (35)
- Require DNA samples for murder only (9)
- No requirement for violent crimes (6)



Burglary Requirements

■ Require DNA samples for burglary (24)



All Felonies Requirements

■ Require DNA samples for all felonies (7)

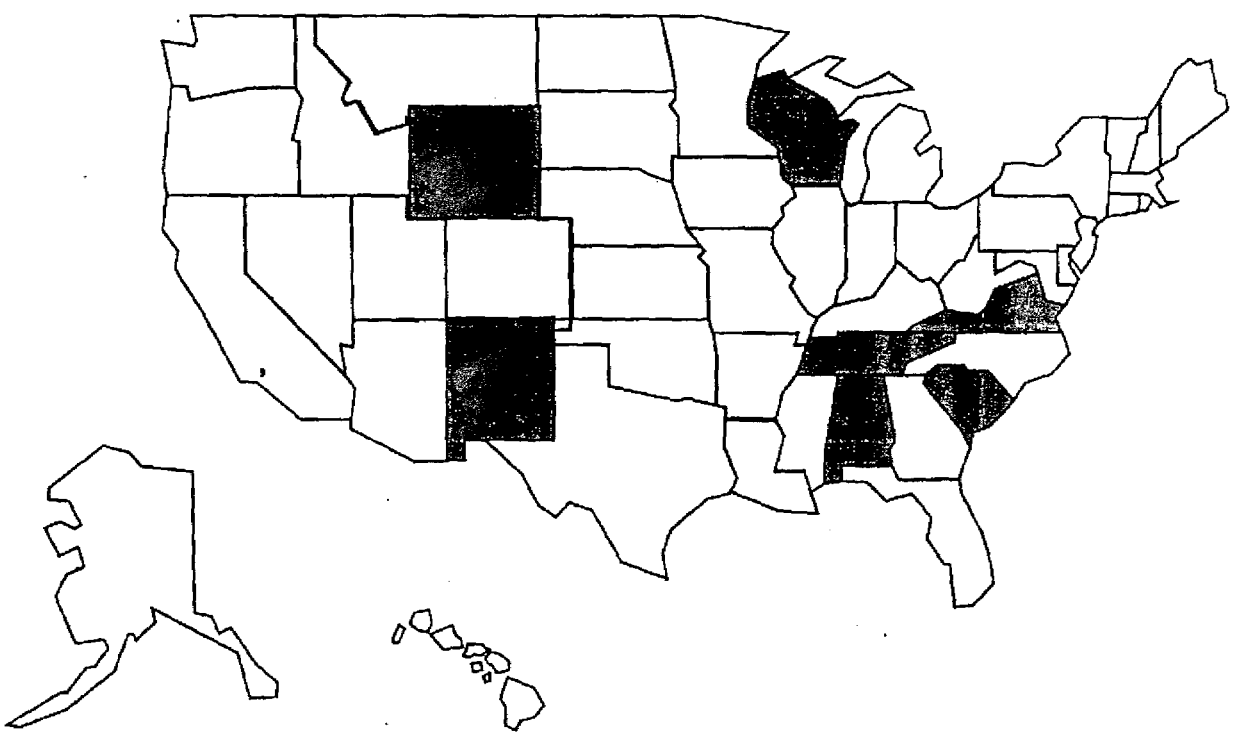


EXHIBIT 8
DATE 2-02-01
HB 359

Benefits of Expanding Criminal DNA Databases

Most states have enacted legislation requiring the collection of DNA samples from violent criminals. Once a sample has been collected, it is profiled and entered into secure state and federal databases. These databases are an irreplaceable investigation tool for law enforcement. When law enforcement obtains DNA from a crime scene, the DNA is compared against the state and federal databases. If the crime scene DNA matches a profile in the DNA database, then law enforcement has a suspect.

Recently, state legislators throughout the country have questioned why the DNA databases of violent offenders are not being expanded to include all convicted offenders. This comes as some U.S. states and foreign countries have discovered that expanding DNA databases beyond violent criminals could double the chances of matching a suspect against the state and federal databases.

Expanding the state databases to include all convicted offenders would have several benefits: First, more crimes would be solved; second, more crimes would be prevented; third, more innocent people would be exonerated; and lastly, society would realize greater cost-efficiencies:

1. **Solve crimes** – DNA collection from all convicted felons, rather than just sex offenders and serious violent crimes, would result in a monumental amount of violent crimes being solved. Statistics show that as many of half of the criminals that commit violent crimes have non- violent criminal histories (see Virginia and Great Britain study). Therefore, offenders who are required to submit DNA when convicted of non-violent felonies will be identified as they leave DNA behind at a rape and murder scenes. *If a state takes DNA from violent offenders only, the likelihood of solving a particular rape or murder are reduced by 50%.*

2. **Prevent crimes** - Solving a crime -- and solving it quickly -- has a direct effect on preventing additional crimes by the same perpetrator. An offender who is not apprehended in a timely manner remains free to commit more crimes. For example, according to a study completed by the National Institute of Justice (US Department of Justice) the average rapist commits 8-12 sexual assaults. If law enforcement could immediately apprehend the rapist after the first sexual offense, *then a minimum of 7 rapes would be prevented per offender*. When considering that *as many as half* of all violent criminals have a prior conviction for a non-violent crime, it becomes evident that expanding DNA database requirements to all convicted felons would significantly impact the number and frequency of rapes and other repeat violent crimes in this country.

3. **Exonerate the innocent** - Increasing the DNA database to those convicted of non-violent offenses would reduce the occurrence of innocent people who are wrongly suspected, arrested and convicted of crimes they did not commit. Two common scenarios exemplify how a larger DNA database protects such innocent people:

    - *The guilty party is in the database* – Imagine that strong circumstantial evidence leads law enforcement to suspect an innocent person of a crime. An analysis of DNA evidence from the crime scene identifies someone else as the true perpetrator when it is matched against profiles in the state's database. The innocent person is dismissed as a suspect and the true perpetrator is arrested.

    - *The innocent party is in the database* – Imagine a situation where law enforcement has DNA from a crime scene that they know belongs to the true perpetrator. Now imagine that law enforcement has identified a probable suspect, but does not have enough cause to obtain a warrant for a DNA sample from the suspect. If this suspect's profile was already in the database due to a previous non-violent conviction, law enforcement could automatically check the database and subsequently eliminate the person as a suspect. This would reduce an immeasurable amount of needless embarrassment and stress brought upon innocent persons wrongly suspected of committing horrible crimes.

eliminate suspects, avoid unnecessary trials

4. **Cost Efficiencies** – According to a study completed by the National Institute of Justice (U.S. Department of Justice) rape is the costliest crime in America with victim costs totaling $127 billion. The study estimated that when all factors are considered (including medical and mental health care, lost productivity and decreases in the quality of life) the estimated cost of rape *per victim* is $87,000. If the average rapist commits 8 rapes, but a DNA databank stops the offender half way through his spree, then 4 rapes are prevented at a savings of $348,000. We know that the federal DNA database system has matched crime scene evidence to a database profile on at least 100 sexual assault cases. If we assume that just 25% of these offenders would have committed only one more rape each, a minimum of $2.17 million in savings would be realized.

THE ROANOKE TIMES

TUESDAY

NOVEMBER 14, 2000

Christiansburg burglary is 1 of 250 cases solved by use of state's DNA database

Bank of DNA samples yields big results for Va. police

Virginia is one of seven states that take DNA samples from all felons, not just sex offenders.

By SHAY WESSOL
THE ROANOKE TIMES

CHRISTIANSBURG — When town police were called to investigate a burglary last year in a building at Sunset Cemetery, they had little evidence except for a few smears of blood on a broken window.

A decade ago, the case might have wound up in the unsolved pile. But a statewide database of DNA taken from all felons convicted since 1990 is beginning to change that.

In the last two years, the database has sparked a growing number of "cold hits" — matches that police turn up during blind checks of DNA-type evidence against the database.

As of this week, 250 cases, including the Christiansburg burglary, have been solved because someone convicted of a felony had been ordered by a court to give up a DNA sample that was entered into the databank, said Paul Ferrara, director of the Virginia Division of Forensic Science, which maintains the database.

"We're getting one almost every working day, and that's really exciting," Ferrara said.

Christiansburg investigators sent a sample of that blood to the state forensics lab, blindly hoping that a DNA match might turn up. For the first time for Montgomery County authorities, it did.

"That made the case. We had no fingerprints, no nothing," said Capt. Tom Lawson of the Christiansburg Police Department. "The guy denied knowing anything about it, but yet his blood was there."

Once investigators received word of a match from the lab, they obtained another blood sample from the suspect, 42-year-old David Bryan Smith. When that blood was analyzed, it proved conclusively that Smith had cut himself on the building's window, Lawson said.

That was enough to put Smith at the scene — without any witnesses — and gave police the probable cause to get the arrest warrant, he said.

On Nov. 3, Smith pleaded guilty in Montgomery County Circuit Court to the Oct. 10, 1999, break-in and grand larceny from Sunset Cemetery on South Franklin Street. He was sentenced to eight years in prison, with all but two years suspended, and ordered to pay $1,800 in restitution. Information as to why Smith's DNA was already in the database was unavailable Monday.

DNA testing has been used for years to help pinpoint suspects in sexual assault and homicide cases. Now, in part through the state's database, the genetic material is turning up as evidence in a wider variety of cases, most notably in property crimes.

Soon, authorities say, it could be used as regularly and with as much accuracy as fingerprints.

"DNA evidence is treated just like a fingerprint," said Capt. Tony Webb of the Pulaski County Sheriff's Office. "If you've got a suspect who says he wasn't there and you find DNA evidence, then they've got to sit down and explain what it's doing there."

In most instances, DNA analysis is used to prove that an existing suspect was or wasn't at the scene of the crime.

Pulaski County authorities, for example, plan to use DNA evidence in the capital murder trial of Jeffrey Allen Thomas, who's charged with the Jan. 25 shooting death and attempted rape of 16-year-old Tara Rose Munsey. By comparing DNA in Thomas' blood with a semen stain found on Munsey's thigh, prosecutors want to prove that Thomas was with Munsey the night she died.

All states require DNA, found in human cells and carrying a unique genetic code, to be drawn from convicted sex offenders. Virginia is one of seven states that take DNA samples from all felons.

The database contains more than 120,000 samples, Ferrara said.

"We're processing crime scene evidence in about 1,300 cases a year right now, which is probably one of the largest operations in the country," he said. "We realized 10 years ago what it could do, and now we're actually seeing it happen."

The database has found suspects in decades-old murder cases as well as crimes that don't make headlines. Even the little victories mean a lot to those investigating them.

Radford police recently got their first cold hit through the databank and are close to making an arrest in a breaking-and-entering case. Investigators will request a search warrant to take a blood sample from the suspect for testing, said Capt. Gary Harmon.

It takes 60 to 75 days to get evidence processed through the state labs and checked against the database, Ferrara said. He said the state's goal is to reduce that time to less than 30 days.

The state picks up all the costs — about $50 to enter a new felon into the database and at least $5,000 to process evidence submitted to the lab, he said.

"It ain't cheap on the surface in terms of dollars and cents," Ferrara said. "But if you look at it from the standpoint of, first, how much investigator time did it save and, more importantly, how many victims did not become victims because of the databank or how many innocent people were not convicted of a crime they didn't commit, then those costs seem minimal."

Shay Wessol can be reached at 381-1665 or shayw@roanoke.com

USA TODAY July 10, 20000

Study: Many rapists were thieves first

Results may lead to taking DNA for lesser crimes

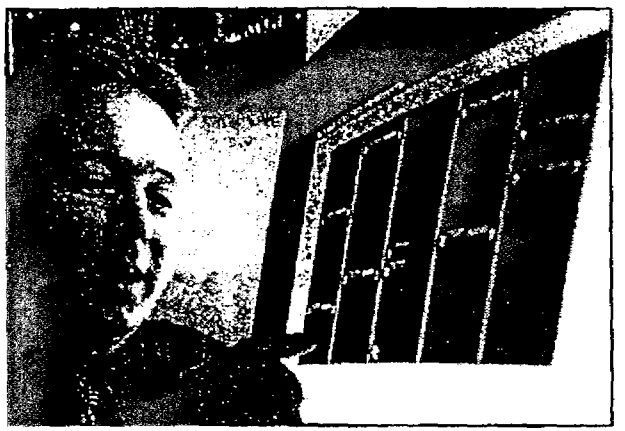
By Richard Willing
USA TODAY

WASHINGTON — At least 40% of men who ultimately are arrested for rape begin their criminal careers with property crimes such as burglary and petty theft, says a study of Virginia's convict DNA database scheduled to be released today.

The Virginia study of 40 rape suspects is the first U.S. analysis of the link between property crime and subsequent sex offenses. It likely will prompt more calls to expand the list of crimes for which DNA is drawn from convicts.

Most of those state databases focus on collecting DNA from violent criminals as a way to quickly identify repeat offenders. But law enforcement agencies and other supporters of expanded databases also want to include non-violent offenders such as burglars. That way, proponents say, more potential rapists would be entered in state DNA databases and matched more quickly to serious crimes.

"To catch those who commit the most serious crimes, you're going to want to collect DNA from those whose crimes at first don't seem so bad," says Paul Ferrara, director of Virginia's DNA database and a study co-author. "In many cases, ultimately they're going to prove to be the same people."



By Mark Foley, AP

Statistics show: David Coffman, Florida's DNA database director, says many rapes are "crimes of opportunity."

Critics of database expansion say the Virginia study's conclusions are based on too small a group of convicts.

"If you're going to expand databases, you're going to have to be smart about it," says Harlan Levy, a lawyer in New York and author of *And the Blood Cried Out*, a book about using DNA in the courtroom.

"You can't make really broad judgments based on narrow data," he says.

Virginia's findings echo the results of a British government study from 1998 that found that more than three-quarters of rapists in the United Kingdom were burglars first. In Florida, an ongoing study of that state's sex offenders has found that more than half were previously burglars or petty thieves.

The Virginia study is scheduled to be discussed here today at a meeting of the National Commission on the Future of DNA Evidence.

All states require DNA, the body chemical that carries an individual's unique genetic code, to be drawn from some convicted offenders. That information is stored on a computer database. Authorities then can check whether DNA taken from crime scenes matches any DNA profile in the database.

All states take DNA, typically in the form of blood or saliva, from convicted sex offenders, and most collect it from murderers. But only seven states do DNA profiles of all felons, including burglars and other non-violent offenders. And lately, state legislatures have resisted efforts to expand DNA databases. This year, 17 state legislatures considered proposals to expand the list of crimes for which DNA is drawn. Eight passed such measures.

Virginia, which began the first state DNA database in 1989, is among the seven states that take samples from all convicted felons.

The study tracked 40 men in Virginia who were matched by DNA evidence to unsolved rape, sodomy or indecent exposure cases from 1993 through 1999.

About 60% were matched because their DNA had been filed after they were convicted of a previous sex offense. But the other 40% were caught because their DNA was on the database for lesser felonies, mainly burglary and larceny.

"If you just (take DNA for) a rape conviction, you're giving someone, in effect, a free rape before they can be put on the database and matched," Virginia's Ferrara says. "But if you include the so-called 'gateway' or 'predictor' crimes, you're much more effective."

David Coffman, Florida's DNA database director, says the data suggest that rapes are often "crimes of opportunity" committed by burglars who find women home alone.

"Anecdotally, police have known this for a long time," says Coffman, who is studying the criminal history of convicts in Florida. "Now we can quantify it and, better yet, do something about it."

Prodded by Coffman's statistics, the Florida Legislature recently added burglary to the crimes for which DNA can be collected.

Jerry Lyell, a defense lawyer in Arlington, Va., criticized the expanded databases as part of a "general trend" among prosecutors to try to convince the public that DNA evidence is "always the be-all and end-all."

"Do we really want every minor offender's genetic code in the government's hands, just because some prosecutor argues that it might help him make a case somewhere down the road?" Lyell asks. "That's asking a lot."

DNA Testing Aids the Search for Truth

BY RUDOLPH W. GIULIANI

ON ITS MOST BASIC level, our criminal justice system is about a search for the truth. The responsible use of DNA testing promises to take much of the guesswork out of that search for the truth in court. DNA will prove to be the most effective tool our civilization has devised to protect the innocent, convict the guilty, and even prevent many crimes from occurring.

Just as fingerprinting was considered controversial when it was first introduced, the increased use of DNA testing has also proved controversial. Nonetheless, every relevant court decision has upheld the constitutionality of DNA data banking. And in England, where both traditional fingerprinting and DNA fingerprinting were first developed, a DNA database containing samples from almost 700,000 criminals has led to 70,000 cases being cleared over the past five years.

America currently lags far behind in embracing this technology. The City of New York is aiming to close this gap by establishing a $126 million, state-of-the-art DNA testing facility and database — by far the largest and most advanced in the nation.

Many Potential Benefits

We have already seen glimpses of the potential benefits of DNA evidence in our city. One of the best examples is the criminal investigation and prosecution of Arohn Kee, who is currently awaiting trial in New York County Supreme Court. With the help of DNA evidence, Mr. Kee was indicted for seven rapes and murders that took place between 1991 and 1998.

Just as important, the same DNA evidence led to six individuals being cleared of charges, including one person who had already been indicted for a rape later connected to Mr. Kee. Interestingly, that person's arrest stemmed from an eyewitness identification, which was later proved wrong. He was freed, and justice was served, because of DNA.

In this example, and many others, DNA has already established its value as a powerful tool for the defense. Yeshiva University's Cardozo School of Law has an initiative known as the Innocence Project, which examines DNA evidence in cases where people convicted of crimes continue to maintain their innocence. Led by lawyers Barry Scheck and Peter Neufeld, the Innocence Project has secured the release of 38 innocent individuals serving time in jail. In total, DNA evidence has led to the exoneration of almost 70 people in our nation's prisons — eight of whom were on death row.

Another example of DNA evidence at work shows that greater use of a DNA databank will be a powerful tool for preventing crime.

Between 1993 and 1999, a man named Issac Jones, who was out on parole, committed 51 rapes and sexual assaults in our city. At the very first rape, he left DNA evidence. But because a substantial DNA databank did not yet exist, we were not able to link him to the crime. When Mr. Jones was finally arrested, police took a sample of his DNA, which proved a match to 17 separate rape cases in which DNA had been recovered. Police were then able to link Isaac Jones to additional rapes and sexual assaults, 51 in all. If we had been maintaining a DNA database, and taking DNA from people who are arrested or convicted of crimes, we could have identified Isaac Jones after the first rape he committed. And 50 women might have been spared the horror of sexual assault.

Although DNA promises to have its greatest applicability in solving crimes of rape and sexual assault, they are by

Mayor Giuliani

no means the only crimes that can be solved using this technology. For example, more than half of the 70,000 cases in which DNA evidence has been used in England were burglaries and car thefts. And, of course, DNA can help in establishing paternity, and making "deadbeat dads" accountable for supporting their children.

There are those who continue to resist the use of this scientifically proven technology. The ACLU has launched a series of court challenges to the establishment of DNA databanks in several states on the ground that such databanks contain personal information and therefore constitute an invasion of privacy.

The Supreme Court has yet to offer an opinion on the constitutionality of DNA databanks. However, we should keep in mind that police across the nation have for many years maintained a database of identifying information on file, in the form of traditional fingerprints.

New York has recently amended its law to authorize the taking of DNA samples with a simple cotton swab inside the mouth, as the English do, so that the process will be even less invasive.

The New York State Legislature should authorize police to take DNA samples from every person who is arrested for a printable offense. DNA testing should be as commonplace as fingerprinting is today. And just as we treat fingerprints, if a person is acquitted or not prosecuted, the DNA profile should be expunged from the databank, and the sample destroyed.

Congress and state legislatures should provide sufficient funding to analyze the backlog of untested DNA samples that sit frozen in vaults. Because this effort is so important, I have set aside $4.5 million in funding during the city's next fiscal year to provide for analysis of approximately 12,000 rape kits. This will not only dramatically increase the number of old cases that will be solved, but will prevent further victimization.

To be truly effective, legislatures should also enact laws to eliminate the statute of limitations in cases of rape and sexual assault. Because of this new technology, we are no longer limited by time in analyzing evidence, and should not be so limited in prosecuting sexual predators and other criminals.

Congress should authorize funding to address both casework and convicted offender samples, so that the existing federal data banking system can be used to its full potential. Most criminals commit crimes without regard to state lines. New York's police should have access to data on criminals from New Jersey and Connecticut, and vice versa.

Finally, the United States should have a laboratory system that is able to address the capacity and the demand for DNA analysis. England's Forensic Science Service could serve as a model. A professional laboratory system ensures a neutral process dedicated to only one outcome — the truth.

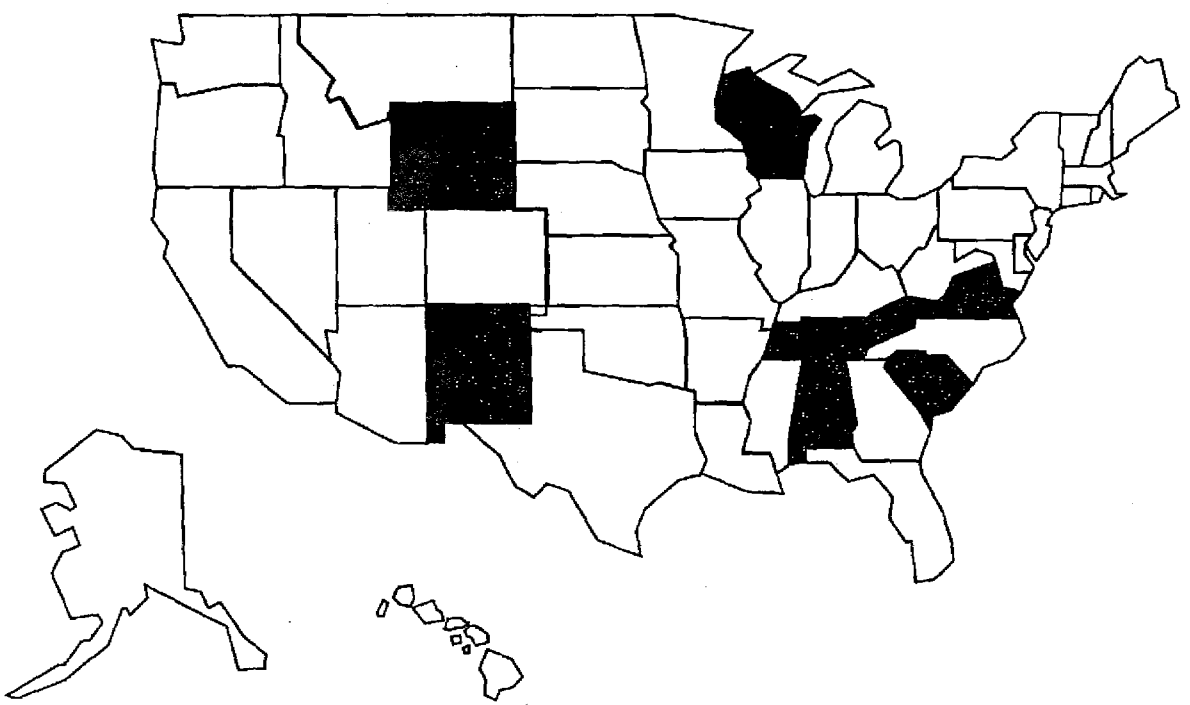
We need to meet the challenges of the future by embracing the technologies of the future. DNA testing will prove to be the most effective means of establishing guilt or innocence — and thus furthering justice — in the 21st century.

Rudolph W. Giuliani *is the Mayor of New York City.*

EXHIBIT 9
DATE 2-02-01
HB 359

All Felonies Requirements

■ Require DNA samples for all felonies (7)



HOUSE OF REPRESENTATIVE

ROLL CALL

JUDICIARY COMMITTEE

DATE 2-07-01

NAME	PRESENT	ABSENT	EXCUSED
REP. JIM SHOCKLEY, CHAIR	✓		
REP. JEFF LASZLOFFY, V.C.	✓		
REP. PAUL CLARK, V.C.	✓		
REP. DARREL ADAMS	✓		
REP. GILDA CLANCY	✓		
REP. AUBYN CURTISS			✓
REP. BILL EGGERS	✓		
REP. STEVE GALLUS			✓
REP. GAIL GUTSCHE	✓		
REP. CHRISTOPHER HARRIS			✓
REP. LINDA HOLDEN	✓		
REP. JOAN HURDLE	✓		
REP. JEFF MANGAN	✓		
REP. BRAD NEWMAN	✓		
REP. MARK NOENNIG	✓		
REP. KEN PETERSON	✓		
REP. DIANE RICE	✓		
REP. BILL THOMAS	✓		
REP. MERLIN WOLERY	✓		
REP. CINDY YOUNKIN	✓		

House of Representatives

Roll Call Vote

JUDICIARY COMMITTEE

DATE 2-02-01 Bill NO. HB 359 NUMBER #10

MOTION: Rep. Newman moved Do Pass

Name	AYE	NO
Rep. Jim Shockley, Chairman		
Rep. Jeff Laszloffy, Vice Chair Majority		
Rep. Paul Clark, Vice Chair Minority		
Rep. Darrel Adams		
Rep. Gilda Clancy		
Rep. Aubyn Curtiss		
Rep. Bill Eggers		
Rep. Steve Gallus		
Rep. Gail Gutsche		
Rep. Christopher Harris		
Rep. Linda Holden		
Rep. Joan Hurdle		
Rep. Jeff Mangan		
Rep. Brad Newman		
Rep. Mark Noennig		
Rep. Ken Peterson		
Rep. Diane Rice		
Rep. Bill Thomas		
Rep. Merlin Wolery		
Rep. Cindy Younkin		

House of Representatives

Roll Call Vote

JUDICIARY COMMITTEE

DATE 2-02-01 Bill NO. IVB359 NUMBER #11

MOTION: Rep. Laszloffy moved to postpone

Name	AYE	NO
Rep. Jim Shockley, Chairman		
Rep. Jeff Laszloffy, Vice Chair Majority		
Rep. Paul Clark, Vice Chair Minority		
Rep. Darrel Adams		
Rep. Gilda Clancy		
Rep. Aubyn Curtiss		
Rep. Bill Eggers		
Rep. Steve Gallus		
Rep. Gail Gutsche		
Rep. Christopher Harris		
Rep. Linda Holden		
Rep. Joan Hurdle		
Rep. Jeff Mangan		
Rep. Brad Newman		
Rep. Mark Noennig		
Rep. Ken Peterson		
Rep. Diane Rice		
Rep. Bill Thomas		
Rep. Merlin Wolery		
Rep. Cindy Younkin		

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 2-02-01

BILL NO. HB359

SPONSOR(S) Rep. Clark

TYPE

PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P O I	DIANA LEIBINGER-KOCH	HELENA	DOC
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Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **VICE CHAIRMAN DUANE GRIMES**, on March 9, 2001 at 9:02 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: Sen. Lorents Grosfield, Chairman (R)

Members Absent: None.

Staff Present: Anne Felstet, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 201, HB 331, HB 359, 2/28/2001
Executive Action: HB 201, HB 224, HB 331, HB 402

said looking at the bill, it could be argued that it was property intrusted to the person. Under those circumstances, the attorney could pick the statute that said the thief purposely or knowingly obtained or exerted unauthorized control over property of the owner and not rely on embezzlement. There were two different approaches to cover theft of partnership property.

VICE CHAIRMAN GRIMES looked at theft of another versus theft of property in this section of code and wondered if amending anything in was necessary. **Mr. Lambert** said he would be willing to be present during the executive session.

VICE CHAIRMAN GRIMES questioned the amendment. He understood the arguments for having the threshold, but if someone was embezzling and were at $8000, he wondered if the owner could be tempted to wait longer for the threshold to be met. **REP. DAVIES** said in his own case, it took two months to find what had happened. The books were complex enough to not allow for an accurate dollar figure. He felt the scenario was an unlikely situation. He also believed the response would be to make it stop, not to prolong it. In his case, once he began going through the books, the embezzler stole another $11,000. He felt that the nature of the crime was complicated enough to make the scenario unlikely.

Closing by Sponsor:

REP. DAVIES closed on HB 201. He noted that these criminals were considered non-violent and they walked. However, because the amounts were so great, it was justified to have an enhanced penalty in the statute. In many cases, it would prove to be a good deterrent. Often times, a jail sentence would be devastating to them. He said **SEN. HALLIGAN** agreed to carry the bill if it came out.

HEARING ON HB 359

Sponsor: **REP. PAUL CLARK, HD 72, TROUT CREEK**

Proponents: **Michelle Griffin, Montana State Crime Lab**
Winnie Ore, Department of Corrections
John Connor, Department of Justice

Opponents: **Scott Crichton, Executive Director of American Civil Liberties Union**

Opening Statement by Sponsor:

REP. PAUL CLARK, HD 72, TROUT CREEK, opened on HB 359, a bill intended to expand the DNA database. He said it was not at the request of the Department of Justice, but a bill that came about from his own research. Information regarding the expansion of the DNA database noted that the database helped solve difficult crimes, especially rape cases. Seven states already had expanded the DNA database to include all felonies. Montana currently had a database that included sex crimes and violent felonies. Further research, including a visit to the crime lab, made him a believer that with additional information, the state could solve more crimes, protect more victims, and save a lot of money (in terms of the costs of investigations). He mentioned the handout: Benefits of Expanding the Criminal DNA database, **EXHIBIT(jus54a06)**. He noted that half of all those committing violent crimes had a history of committing non-violent crimes. He felt this spoke to the evolution of criminal activity. It didn't start with committing murder as the first criminal activity. Rather, there was a long history of criminal activity; especially in the areas of rape. He found that between 40 to 50% of rapists had a non-violent criminal history that included burglary. He tried to find out the reason for the correlation. Evidently, frequently, rapes were crimes of opportunity. They could occur because a burglar would enter a house to find the lone occupant was a woman. In that situation, the burglar might not have been caught for a violent felony, and yet he could have been picked up and prosecuted for a number of non-violent or non-sex crimes. Therefore, he would not be entered in the DNA database. It also occurred to him that the opportunist rapist, under current statutes with the five-year statute on limitations for rape, could commit four rapes in 15 years. If the rapist ever did get caught for the fourth one, the person could be prosecuted as a first time offender. Another purpose of the bill was to prevent crimes. According to a National Institute of Justice study, the average rapist committed 8 to 12 sexual assaults. When considering that half of all violent criminals had prior convictions for a non-violent crime, it became evident that expanding DNA requirements to all convicted felons would significantly impact the number and frequency of rapes and other repeat violent crimes in the country. DNA and the database was nothing more than technological fingerprinting, using the abilities of today that were not available 50 years ago. He argued most people accepted fingerprinting as a part of the criminal justice system. DNA fingerprinting was extremely accurate. The third purpose of the bill was to exonerate the innocent. It was not just a bill to ensure more convictions. He noted the number of people on death row exonerated through DNA analysis. Lastly, the purpose of the bill was to decrease the cost of long, tedious, expensive investigations. According to the study by the U.S. Department of Justice, rape was the costliest crime in America. Victim costs totaled $127 billion dollars. He

felt the state investigation department would say it was one of the costliest investigations they had to do also. If they did a rape investigation, but never found the suspect and another rape occurred, then one investigation solved in a timely fashion would justify the entire fiscal note on the bill. He stated a few findings in other parts of the country that reiterated his point about the nature of criminals progressing in severity level of crime. He noted he profoundly supported the rights of victims. This was one of three bills regarding sexual assault passed out of the House Judiciary Committee to address these issues. He pointed out the opponents could argue the intrusive nature of having a database. These were felons who flagrantly disregarded the law. For those who obeyed the law, they had rights to be protected. However, felons were a different story. He also provided two other handouts: DNA Testing Aids the Search for Truth article, **EXHIBIT(jus54a07)**; and a proposed amendment to HB 359, **EXHIBIT(jus54a08)**.

Proponents' Testimony:

Michelle Griffin, Montana State Crime Lab, said as a DNA analyst, her duties were to examine physical evidence for the presence of biological fluid, then determine who that biological fluid came from through DNA analysis. The database was useful because many cases lacked a suspect. If a DNA profile matched a convicted offender's DNA profile (a hit), then the lab could assist investigators in their cases. She said there were about 2100 samples in the convicted offenders database. Basically, the DNA profile was put into a secured computer system database. The system was connected to the FBI database. The paperwork and everything followed their requirements in order for the system to go nationwide. However, Montana was not connected nationally, but she anticipated connection to it this spring. Trends of other states who had lessor offenses included on the databases had provided encouraging results. Many hits that other states received were for individuals with lessor charges. The evidentiary samples had a high rate of matching individuals with lessor offenses. The State Crime Lab supported the bill because of the positive results from the other states.

Winnie Ore, Department of Corrections, said she represented Director Bill Slaughter. The Department of Corrections supported the bill and urged passage.

John Connor, Department of Justice, said the Department discussed pursuing this same issue, but relating only to burglary. In deference to **REP. CLARK's** bill, they felt this bill made more sense, so they withdrew their request. They felt it could carry out the functions that the bill provided for without any

additional cost to the department. It would also utilize existing personnel. He noted that **Ms. Griffith** would be the one to answer any questions related to the details.

Opponents' Testimony:

Scott Crichton, Executive Director of the American Civil Liberties Union, acknowledged he understood **REP. CLARK's** statement about people objecting to databases. He didn't have a problem with adults being included, it did help prosecutors. However, he was concerned with section 2, which dealt with youth. He reminded the committee that there were two different systems; adult and juvenile. The juvenile system had a predicate that people changed and the indiscretions of youth were often remedied with maturity. Hence, the expungement of juvenile records at the age of 18. He wanted to know the advantage of taking a DNA sample from a juvenile and putting it into the database from which it would have to be retracted. He urged consideration of the implications for juveniles. He noted that the House Judiciary committee did not discuss this portion of the bill, so it should be reviewed. As far as he could tell, 41-5-1502 was the due process of the youth court, but it was not broader than that. Therefore, a youth writing a bad check could be required to provide a DNA sample.

Questions from Committee Members and Responses:

SEN. RIC HOLDEN said that prior concerns of the committee dealt with the D.U.I. issue as it related to a felony offense and also the collection of the data on a county basis and its impact to the counties. He asked how the legislation would affect D.U.I. convictions and the felonies. Also check writing felonies. **John Connor, Department of Justice,** clarified the question saying the bill dealt only with felony offenses. Therefore, if it were a D.U.I. felony conviction, then the legislation would apply. The process by which samples were collected used an oral swab. It was a simple process accomplished using materials provided by the Crime Lab to local law enforcement. County involvement would be to mail the swab back to the lab. The cost would be something attributable to personnel costs in terms of taking the swab. He felt that would be negligible.

SEN. HOLDEN thought the ACLU brought up good points with regard to a person's privacy in some instances. The ACLU also was correct year's ago when the procedure was first started. He was cautious as to how far it should be taken. At the time, good public policy legislation was passed putting DNA databases into place. However, now it went further. He wanted an opinion regarding putting someone's DNA on record who had written a bad

check. **Mr. Connor** said he subscribed to the point **REP. CLARK** made about non-violent offenders maturing into violent ones. He said he had spent 25 years in the criminal justice system as a public defender and as a prosecutor. In that time, he witnessed people who engaged in crime mature from non-violent offenders into violent ones. He felt it made more practical sense that if a database existed, then it ought to cover all felony offenders because it was as much an advantage to the innocent as it was to the guilty. If the database was partial, then it didn't help the innocent any more than it helped to convict the guilty. Something that went across the board provided protection for the innocent as well as the guilty. He thought the ACLU had a good point in respect to the juvenile offenders. When he asked **Ms. Griffin** about that, she indicated the lab might have some problem dealing with the expungement of juvenile records. If **REP. CLARK** had no objections to removing that part of the bill, the Department of Justice wouldn't object either.

{Tape : 2; Side : B}

SEN. JERRY O'NEIL questioned when a youth's felony conviction was expunged from their record at 18, but their DNA was still in the database, would anyone be able to tell anything about the person other than their identity. Would someone know what the person was charged with? **Mr. Connor** thought the bill in section 4 addressed that kind of situation. When a juvenile committed a crime if committed by an adult would be a felony, then the juvenile was prosecuted by a delinquency petition that alleged it would be a felony. Under the bill as written, the DNA sample would be taken. When the youth turned 18, then the bill provided for the expungement of that record.

SEN. O'NEIL furthered if the bill didn't expunge the DNA sample, but the record was expunged, would anyone be able to tell from the DNA database what the felony was. **Mr. Connor** replied the database only provided the DNA profile. The only thing the database could be used for would be to compare the DNA profile against evidence that was developed in another crime. The evidence alone would not disclose a person's criminal history.

SEN. O'NEIL questioned if the database itself would indicate the person had ever been convicted of any crime. Were there other people in the DNA database other than felons. **Mr. Connor** said no, not in Montana.

SEN. O'NEIL clarified if the conviction couldn't be determined or if there were no others besides felons in the database. He re-referred to the DNA analyst from the Crime Lab. **Michelle Griffin, Montana State Crime Lab,** said it couldn't be determined if the

person was convicted of a crime. The database included a person's name, social security number, a DNA identifying number, and the agency that the person's sample came from. That was the only information kept regarding the individual of the sample. When evidentiary samples were run against the people in the database, the Crime Lab contacted the department in charge of the evidentiary sample as to a possible suspect. She clarified there was a Montana suspect database and that was used for Montana only. It was based on people who were not convicted, but were suspects or charged.

SEN. O'NEIL questioned if it was a Montana suspect DNA database, or a Montana suspect database that did not include DNA. **Ms. Griffin** replied it was a DNA database for Montana suspects. There were two other databases; 1) missing person's, 2) convicted offender database connected with the FBI. The Montana database was the state's only. The Lab could run evidentiary samples against that database.

VICE CHAIRMAN DUANE GRIMES asked the sponsor to respond to the opponents concerns over the lower-end felonies in youth and the implications of that. **REP. CLARK** said he was approached by the ACLU regarding the juvenile issue that morning. He felt the juvenile issue was a policy decision. Frankly, he didn't realize it could also be a technical problem for the crime lab to expunge the records and possibly require a lot of time on their part. Therefore, if the committee considered the issue and concluded it would be better to leave juveniles out of it, he would not oppose that and would concur with the amendment.

VICE CHAIRMAN GRIMES furthered if he would intend for the sexual offense or violent youth to be included or excluded. **REP. CLARK** replied he subscribed to **Mr. Connor's** theory that if a violent youth was involved in sexual assault or rape and other violent crimes, the chances of that continuing were greater than for a youth with no history of violent crime. He said he worked to rehabilitate kids and with chemically dependent kids. However, he did not work with very many violent offenders. He argued it did not help society or the state to say, "these are just kids". He said compassion and positive rehabilitative efforts on the part of juveniles needed to be exercised while at the same time, enabling could not occur. He hoped that juveniles would know that this information was taken, just like a fingerprint, and they would think about that before they continued on their crime spree.

VICE CHAIRMAN GRIMES questioned the amendment, **exhibit (8)**. **REP. CLARK** said it came from the department of Justice. He concurred with the amendment. He believed in cutting costs. The

fiscal note covered the cost of the kits and their administration. There was an earlier fiscal note that had the Department of Corrections money involved. In support of the bill, they withdrew their fiscal need. They would absorb it into their budget. The fiscal note was not based on the amendment. If the amendment was adopted, he intended to decrease the fiscal note even further.

VICE CHAIRMAN GRIMES asked if **Mr. Connor** had seen the amendment. **Mr. Connor** said no because **Ms. Bucy** prepared it. He felt he could provide some history and why it was proposed. There were a couple of large agency law enforcement offices that were concerned with the amount of time it would take officers to collect, package, and send in the samples. They felt that even though it was not a cost factor in terms of the actual material involved, it would be a personnel cost factor. Therefore, in deference to their concerns, the Department of Justice prepared the amendment.

VICE CHAIRMAN GRIMES asked if the funds would then be considered earmarked. He also asked if it was Constitutional to charge fees. **Mr. Connor** said the amendment was prepared from existing statutory language relating to sex offenders.

Closing by Sponsor:

REP. CLARK closed on HB 359. He said it was a policy decision in terms of adults and a separate policy issue in relation to juveniles. He felt the legislation was cost effective, saving the state money. He mentioned it passed the House Judiciary unanimously with only two opposing votes on the House Floor. He felt it had broad support. In regard to the question of the degree of the felony, i.e. cashing a bad check, he argued that low risk people were put on record with their fingerprints, and were not differentiated between high and low risk. He said it was only one step further than fingerprinting and more conclusive. He said the amendment would further reduce the cost to local communities. It would be well worth the money spent.

EXECUTIVE ACTION ON HB 331

SEN. STEVE DOHERTY said looking at **SEN. HALLIGAN's** point, if "financial or medical information" was added to the end of line 13, it would address that concern.

VICE CHAIRMAN DUANE GRIMES said **Valencia Lane, Legislative Staffer**, had already drawn one up that had almost that exact language in the same place.

HB 359

SENATE JUDICIARY
Exhibit No. 6
Date 3/9/01
Bill No. HB 359

Benefits of Expanding Criminal DNA Databases

Most states have enacted legislation requiring the collection of DNA samples from violent criminals. Once a sample has been collected, it is profiled and entered into secure state and federal databases. These databases are an irreplaceable investigation tool for law enforcement. When law enforcement obtains DNA from a crime scene, the DNA is compared against the state and federal databases. If the crime scene DNA matches a profile in the DNA database, then law enforcement has a suspect.

Recently, state legislators throughout the country have questioned why the DNA databases of violent offenders are not being expanded to include all convicted offenders. This comes as some U.S. states and foreign countries have discovered that expanding DNA databases beyond violent criminals could double the chances of matching a suspect against the state and federal databases.

Expanding the state databases to include all convicted offenders would have several benefits: First, more crimes would be solved; second, more crimes would be prevented; third, more innocent people would be exonerated; and lastly, society would realize greater cost-efficiencies:

1. **Solve crimes** – DNA collection from all convicted felons, rather than just sex offenders and serious violent crimes, would result in a monumental amount of violent crimes being solved. Statistics show that as many of half of the criminals that commit violent crimes have non- violent criminal histories (see Virginia and Great Britain study). Therefore, offenders who are required to submit DNA when convicted of non-violent felonies will be identified as they leave DNA behind at a rape and murder scenes. *If a state takes DNA from violent offenders only, the likelihood of solving a particular rape or murder are reduced by 50%.*

2. **Prevent crimes** - Solving a crime -- and solving it quickly -- has a direct effect on preventing additional crimes by the same perpetrator. An offender who is not apprehended in a timely manner remains free to commit more crimes. For example, according to a study completed by the National Institute of Justice (US Department of Justice) the average rapist commits 8-12 sexual assaults. If law enforcement could immediately apprehend the rapist after the first sexual offense, *then a minimum of 7 rapes would be prevented per offender.* When considering that *as many as half* of all violent criminals have a prior conviction for a non-violent crime, it becomes evident that expanding DNA database requirements to all convicted felons would significantly impact the number and frequency of rapes and other repeat violent crimes in this country.

3. **Exonerate the innocent** - Increasing the DNA database to those convicted of non-violent offenses would reduce the occurrence of innocent people who are wrongly suspected, arrested and convicted of crimes they did not commit. Two common scenarios exemplify how a larger DNA database protects such innocent people:

   - *The guilty party is in the database* – Imagine that strong circumstantial evidence leads law enforcement to suspect an innocent person of a crime. An analysis of DNA evidence from the crime scene identifies someone else as the true perpetrator when it is matched against profiles in the state's database. The innocent person is dismissed as a suspect and the true perpetrator is arrested.

   - *The innocent party is in the database* – Imagine a situation where law enforcement has DNA from a crime scene that they know belongs to the true perpetrator. Now imagine that law enforcement has identified a probable suspect, but does not have enough cause to obtain a warrant for a DNA sample from the suspect. If this suspect's profile was already in the database due to a previous non-violent conviction, law enforcement could automatically check the database and subsequently eliminate the person as a suspect. This would reduce an immeasurable amount of needless embarrassment and stress brought upon innocent persons wrongly suspected of committing horrible crimes.

eliminate suspects, avoid unnecessary trials

4. **Cost Efficiencies** – According to a study completed by the National Institute of Justice (U.S. Department of Justice) rape is the costliest crime in America with victim costs totaling $127 billion. The study estimated that when all factors are considered (including medical and mental health care, lost productivity and decreases in the quality of life) the estimated cost of rape *per victim* is $87,000. If the average rapist commits 8 rapes, but a DNA databank stops the offender half way through his spree, then 4 rapes are prevented at a savings of $348,000. We know that the federal DNA database system has matched crime scene evidence to a database profile on at least 100 sexual assault cases. If we assume that just 25% of these offenders would have committed only one more rape each, a minimum of $2.17 million in savings would be realized.

SENATE JUDICIARY
Exhibit No. 7
Date 3/9/01
Bill No. HB 359

DNA Testing Aids the Search for Truth

BY RUDOLPH W. GIULIANI

ON ITS MOST BASIC level, our criminal justice system is about a search for the truth. The responsible use of DNA testing promises to take much of the guesswork out of that search for the truth in court. DNA will prove to be the most effective tool our civilization has devised to protect the innocent, convict the guilty, and even prevent many crimes from occurring.

Just as fingerprinting was considered controversial when it was first introduced, the increased use of DNA testing has also proved controversial. Nonetheless, every relevant court decision has upheld the constitutionality of DNA data banking. And in England, where both traditional fingerprinting and DNA fingerprinting were first developed, a DNA database containing samples from almost 700,000 criminals has led to 70,000 cases being cleared over the past five years.

America currently lags far behind in embracing this technology. The City of New York is aiming to close this gap by establishing a $126 million, state-of-the-art DNA testing facility and database — by far the largest and most advanced in the nation.

Many Potential Benefits

We have already seen glimpses of the potential benefits of DNA evidence in our city. One of the best examples is the criminal investigation and prosecution of Arohn Kee, who is currently awaiting trial in New York County Supreme Court. With the help of DNA evidence, Mr. Kee was indicted for seven rapes and murders that took place between 1991 and 1998.

Just as important, the same DNA evidence led to six individuals being cleared of charges, including one person who had already been indicted for a rape later connected to Mr. Kee. Interestingly, that person's arrest stemmed from an eyewitness identification, which was later proved wrong. He was freed, and justice was served, because of DNA.

In this example, and many others, DNA has already established its value as a powerful tool for the defense. Yeshiva University's Cardozo School of Law has an initiative known as the Innocence Project, which examines DNA evidence in cases where people convicted of crimes continue to maintain their innocence. Led by lawyers Barry Scheck and Peter Neufeld, the Innocence Project has secured the release of 38 innocent individuals serving time in jail. In total, DNA evidence has led to the exoneration of almost 70 people in our nation's prisons — eight of whom were on death row.

Another example of DNA evidence at work shows that greater use of a DNA databank will be a powerful tool for preventing crime.

Between 1993 and 1999, a man named Issac Jones, who was out on parole, committed 51 rapes and sexual assaults in our city. At the very first rape, he left DNA evidence. But because a substantial DNA databank did not yet exist, we were not able to link him to the crime. When Mr. Jones was finally arrested, police took a sample of his DNA, which proved a match to 17 separate rape cases in which DNA had been recovered. Police were then able to link Isaac Jones to additional rapes and sexual assaults, 51 in all. If we had been maintaining a DNA database, and taking DNA from people who are arrested or convicted of crimes, we could have identified Isaac Jones after the first rape he committed. And 50 women might have been spared the horror of sexual assault.

Although DNA promises to have its greatest applicability in solving crimes of rape and sexual assault, they are by

Mayor Giuliani

no means the only crimes that can be solved using this technology. For example, more than half of the 70,000 cases in which DNA evidence has been used in England were burglaries and car thefts. And, of course, DNA can help in establishing paternity, and making "deadbeat dads" accountable for supporting their children.

There are those who continue to resist the use of this scientifically proven technology. The ACLU has launched a series of court challenges to the establishment of DNA databanks in several states on the ground that such databanks contain personal information and therefore constitute an invasion of privacy.

The Supreme Court has yet to offer an opinion on the constitutionality of DNA databanks. However, we should keep in mind that police across the nation have for many years maintained a database of identifying information on file, in the form of traditional fingerprints.

New York has recently amended its law to authorize the taking of DNA samples with a simple cotton swab inside the mouth, as the English do, so that the process will be even less invasive.

The New York State Legislature should authorize police to take DNA samples from every person who is arrested for a printable offense. DNA testing should be as commonplace as fingerprinting is today. And just as we treat fingerprints, if a person is acquitted or not prosecuted, the DNA profile should be expunged from the databank, and the sample destroyed.

Congress and state legislatures should provide sufficient funding to analyze the backlog of untested DNA samples that sit frozen in vaults. Because this effort is so important, I have set aside $4.5 million in funding during the city's next fiscal year to provide for analysis of approximately 12,000 rape kits. This will not only dramatically increase the number of old cases that will be solved, but will prevent further victimization.

To be truly effective, legislatures should also enact laws to eliminate the statute of limitations in cases of rape and sexual assault. Because of this new technology, we are no longer limited by time in analyzing evidence, and should not be so limited in prosecuting sexual predators and other criminals.

Congress should authorize funding to address both casework and convicted offender samples, so that the existing federal data banking system can be used to its full potential. Most criminals commit crimes without regard to state lines. New York's police should have access to data on criminals from New Jersey and Connecticut, and vice versa.

Finally, the United States should have a laboratory system that is able to address the capacity and the demand for DNA analysis. England's Forensic Science Service could serve as a model. A professional laboratory system ensures a neutral process dedicated to only one outcome — the truth.

We need to meet the challenges of the future by embracing the technologies of the future. DNA testing will prove to be the most effective means of establishing guilt or innocence — and thus furthering justice — in the 21st century.

Rudolph W. Giuliani *is the Mayor of New York City.*

SENATE JUDICIARY
Exhibit No. 8
Date 3/9/01
Bill No. HB 359

Amendment House Bill 359

Following Section 3, subsection 2, line 14:

Insert: New Subsection:

(3) The offender is responsible, if able to pay, for the cost of the collection of the sample. The fees charged for the collection can not exceed the actual costs of collection.

MONTANA SENATE
2001 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3/9/01 BILL # HB224 AMENDMENT # -

MOTION: motion to Table

NAME	AYE	NAY
SEN. AL BISHOP	✓	
SEN. STEVE DOHERTY		✓
SEN. MIKE HALLIGAN		✓
SEN. RIC HOLDEN	✓	
SEN. WALT MC NUTT	✓	
SEN. JERRY O'NEIL		✓
SEN. GERALD PEASE		✓
SEN. DUANE GRIMES, VICE CHAIRMAN	✓	
SEN. LORENTS GROSFIELD, CHAIRMAN		
	4	4

DATE March 9, 2001

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 201, HB 331, HB 359

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Marty Lambert	582-2145	Gallatin County	HB201	X	
LEE WISER	587-3631	SELF	HB201	X	
Winnie ORe	444-9795	Corrections	HB359	X	
Jimmy Nelson	444-6681	MT Dept. of Justice	HB331	X	
Pam Bucy	444-2026	D.O.J.	201 331	X	
Troy McGee	447-8477	MT. Chiefs Police Assoc.	331	X	
Traci Turner	442-0815	self	331	X	
Brett Lund	657-3070	Billings P.D.	331	X	
ED EATON	443-2169	AARP	331	X	
Scott Crichton	449-2295	ACLU	359		X
Michelle Griffin	728-4970	Mt. State Crime Lab	359	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 23, 2001 at 8:15 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Anne Felstet, Committee Secretary
Valencia Lane, Legislative Branch
Jodi Pauley, Transcriptionist

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: None
Executive Action: HB 195, HB 208, HB 219, HB 254, HB 208, HB 261, HB 359, HB 521, HB 563, HJ 17, HB 496, HB 290, HB 570, HB 182

EXECUTIVE ACTION ON HB 195

Motion: **SEN. RIC HOLDEN moved HB 195 BE CONCURRED IN.**

Discussion:

buyers were going to be using them for and the language was fairly broad.

Motion/Vote: SEN. O'NEIL made a motion to strike Subsection(d) in its entirety. Motion carried 7-1 with SEN. GRIMES voting no.

Motion/Vote: SEN. DOHERTY moved HB 261 BE CONCURRED IN AS AMENDED. Motion carried 8-0 with SEN. GROSFIELD being excused

EXECUTIVE ACTION ON HB 359

Motion: SEN. HALLIGAN moved BE AMENDED HB035901.avl EXHIBIT(jus66a04).

Discussion:

SEN. HALLIGAN explained the amendments.

SEN. GRIMES referred to the amendments and asked if this applied to children who hadn't been tried as an adult or would it apply to all. **SEN. HALLIGAN** answered only if they hadn't been tried as an adult.

SEN. O'NEIL asked if this would include a situation where a juvenile stole a car when he is 16 and if his DNA was on record forever. **SEN. HALLIGAN** explained this was a discretionary offense that could eventually end up in adult court, and he didn't know of any prosecutor who would bring a juvenile into adult court for car theft.

SEN. O'NEIL asked if this would only apply if the juvenile were tried as an adult. **SEN. HALLIGAN** answered yes.

Vote: Motion carried unanimously.

Motion: SEN. DOHERTY moved HB 359 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. HOLDEN asked if an applicability clause was included in the amendments. **SEN. HALLIGAN** answered no, it was not.

SEN. HOLDEN referred to page two and wondered about the discussion that DNA would not be kept on file once the offender reached the age of majority. **Valencia Lane** said they treated youths differently as they were tried in juvenile court and they

have the right to have their records deleted once they reach the age of majority.

SEN. GRIMES discussed a felony offense on page one. He felt there should be records of DNA for serious crimes, however, he said there were felonies for certain things as check forgery, bribery, and he asked if these were included in the DNA database also. **SEN. HALLIGAN** said the DNA should be on record forever.

SEN. DOHERTY said DNA testing should apply to a violent crime that was a felony, but not apply for simple felonies. **Valencia Lane** gave the descriptions of offenses in Title 45.

SEN. O'NEIL felt some felonies might need to be changed to misdemeanors, and he added some of the misdemeanors also needed to be included in this database.

Substitute Motion/Vote: SEN. DOHERTY moved a conceptual amendment to include the DNA in Chapter 5 and Chapter 9 of Title 45. Motion carried unanimously.

Motion/Vote: SEN. GRIMES moved HB 359 BE CONCURRED IN AS AMENDED. Motion carried 8-0 with SEN. GROSFIELD being excused.

EXECUTIVE ACTION ON HB 521

Motion: SEN. O'NEIL moved HB 521 BE CONCURRED IN.

Discussion:

SEN. O'NEIL referred to page two and mentioned there was a listing of sentencing enhancing acts and from testimony there was discussion this was not an inclusive list.

Substitute Motion: SEN. HALLIGAN moved a conceptual amendment to strike on page two, line three beginning with "an" and through "place" to line 14.

Discussion:

SEN. HALLIGAN said they don't need the list at all as something might be omitted. **SEN. O'NEIL** said the reason the list was there was to give some directions to the prosecutors around the state.

SEN. GRIMES said he didn't know if having it in or out was that important as prosecutors should know already and he did not want to intentionally limit it.

SENATE JUDICIARY
Exhibit No. 4
Date 3/23/01
Bill No. HB 359

Amendments to House Bill No. 359
3rd Reading Copy

Requested by Senator Mike Halligan

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 12, 2001 (12:35PM)

1. Title, line 4.
Following: "ALL"
Insert: "ADULT"

2. Page 2, line 4.
Following: line 3
Insert: "(10) "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.
(11) "Violent offense" has the meaning contained in 46-23-502."

3. Page 2, line 11 through line 12.
Following: "~~violent~~" on line 11
Strike: remainder of line 11 through "felony" on line 12
Insert: "a sexual or violent"

4. Page 3, line 4.
Following: "~~violent~~"
Strike: "an"
Insert: "a sexual or violent"

5. Page 3, line 4 through line 5.
Following: "offense" on line 4
Strike: remainder of line 4 through "offense" on line 5

DOJ

6. Page 3, line 15.
Following: line 14
Insert: "(3) The offender is responsible, if able to pay, for the cost of the collection of the sample. The fees charged for the collection may not exceed the actual costs of collection."
Renumber: subsequent subsections

(OVER)

7. Page 3, line 22.
Following: "for"
Strike: "an offense that would be a felony offense if committed by an adult"
Insert: "a sexual or violent offense"

- END -

SENATE STANDING COMMITTEE REPORT

March 23, 2001

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 359** (third reading copy - blue) **be concurred in as amended.**

Signed: _____
Senator Lorents Grosfield, Chair

To be carried by Senator Duane Grimes

And, that such amendments read:

1. Title, line 4.
Following: "ALL"
Insert: "ADULT"

2. Page 1, line 25.
Following: "offense""
Strike: "has the meaning provided for a felony in 45-2-101"
Insert: "means any offense under Title 45, chapter 5 or chapter 9, for which the maximum potential sentence under statute is death or imprisonment in a state prison for a term exceeding 1 year"

3. Page 2, line 4.
Following: line 3
Insert: "(10) "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.
(11) "Violent offense" has the meaning contained in 46-23-502."

4. Page 2, line 11 through line 12.
Following: "~~violent~~" on line 11
Strike: remainder of line 11 through "felony" on line 12
Insert: "a sexual or violent"

Committee Vote:
Yes 8, No 0.

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5. Page 3, line 4.
Following: "~~violent~~"
Strike: "an"
Insert: "a sexual or violent"

6. Page 3, line 4 through line 5.
Following: "offense" on line 4
Strike: remainder of line 4 through "offense" on line 5

7. Page 3, line 15.
Following: line 14
Insert: "(3) The offender is responsible, if able to pay, for the cost of the collection of the sample. The fees charged for the collection may not exceed the actual costs of collection."
Renumber: subsequent subsections

8. Page 3, line 22.
Following: "for"
Strike: "an offense that would be a felony offense if committed by an adult"
Insert: "a sexual or violent offense"

- END -

Amendments to House Bill No. 359
3rd Reading Copy

Requested by Senator Mike Halligan

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 23, 2001 (2:08PM)

1. Title, line 4.
Following: "ALL"
Insert: "ADULT"

2. Page 1, line 25.
Following: "offense""
Strike: "has the meaning provided for a felony in 45-2-101"
Insert: "means any offense under Title 45, chapter 5 or chapter 9, for which the maximum potential sentence under statute is death or imprisonment in a state prison for a term exceeding 1 year"

3. Page 2, line 4.
Following: line 3
Insert: "(10) "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.
(11) "Violent offense" has the meaning contained in 46-23-502."

4. Page 2, line 11 through line 12.
Following: "~~violent~~" on line 11
Strike: remainder of line 11 through "felony" on line 12
Insert: "a sexual or violent"

5. Page 3, line 4.
Following: "~~violent~~"
Strike: "an"
Insert: "a sexual or violent"

6. Page 3, line 4 through line 5.
Following: "offense" on line 4
Strike: remainder of line 4 through "offense" on line 5